

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1604 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
2. To be referred to the Reporter or not? Yes :
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

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AHMED N MAKADA

Versus

GOVT. OF INDIA

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Appearance:

MR DIPAK R DAVE for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 4

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/07/1999

ORAL JUDGEMENT

1. Notice of this petition has been served on all the four respondents by Registered Post, but none has appeared to contest this petition. Consequently it is being finally disposed of at the admission stage.

2. Brief facts giving rise to this petition are as

under :

The petitioner was employed with the Memon Co.Operative Bank Ltd. He was served with an order of suspension dated 21.12.1995 and charge sheet dated 24.1.1996. Departmental Inquiry was conducted against the petitioner. It is alleged that the inquiry was conducted illegally and his demand for furnishing copies of documents was not given any heed. The petitioner was dismissed from service vide letter Annexure : A dated 11.8.1997. Feeling aggrieved the petitioner approached the respondent No.2 Assistant Labour Commissioner with his grievances contained in Annexure : B. The respondents No.3 & 4 appeared before the Conciliation Officer and filed their reply. Conciliation proceedings ultimately failed because of divergent view of the petitioner that he was not working as Branch Manager on the relevant date, having no powers of Branch Manager, whereas the stand of the respondents No.3 & 4 was that the petitioner was Branch Manager hence he is not workman within the meaning of Section 2(s) of the Industrial Disputes Act. Failure Report, Annexure : E, was submitted by the Conciliation Officer on 25.3.1998. In spite of this the respondent No.1 did not refer the dispute to the Competent Industrial Tribunal, hence this writ petition.

3. The impugned order contained in Annexure : F reads as under :

"The disputant was a Branch Manager in the Bank and hence was not a workman under the provisions of the I.D.A Act."

The contention of the learned Counsel for the petitioner has been that it was not for the competent Officer, namely, the Central Government, to enter into disputed question whether the petitioner was Branch Manager or not and since this question was disputed and industrial dispute was raised it was incumbent on the competent Officer, namely, Central Government, to refer the dispute to the Industrial Tribunal.

4. Section 10 of the Industrial Disputes Act, provides that Where the appropriate Government is of opinion that industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute for settlement. Thus, what is required under Section 10 is that there should be satisfaction of the appropriate Government that any industrial dispute exists or is apprehended to exist and if such satisfaction is arrived the dispute or apprehended dispute is to be referred by an order in writing to the Board or Labour Court or

Tribunal for adjudication. In view of the provisions of Section 10 it is not within the competence of the appropriate Government to adjudicate whether the dispute really exists or not and the merits of the dispute cannot be touched by the appropriate Government. The appropriate Government in the instant case has taken shelter behind the fact that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. While taking into consideration respective contentions of the parties the appropriate Government has not kept in mind the provisions of Section 2(s)(iv) of the Act which provides that - "inter-alia workman means a person who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. Neither it has been mentioned in the impugned order what was the wages of the petitioner nor it is mentioned that the petitioner exercised powers either by nature of duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature. Thus, Section 2(s) was not properly appreciated by the appropriate Government.

5. On the factual side in Annexure : B the reference under Section 10 made by the petitioner, it is not clearly mentioned in what capacity he was working. Material concealment has been made and that the only disclosure is that he was lastly working with opposite party No.1 at Surat, but his status and designation has not been disclosed in his reference. Annexure : C is reply to the reference. In Para : 2(A) it has been mentioned that the petitioner was working as Branch Manager at Surat Branch and he was in charge of entire Branch and employees numbering 30 were kept under his direct supervision and control and he was responsible for granting or rejecting leave of the employees working in the said Branch and was also totally responsible with record of the day today work carried on in his Branch and as such he is not workman under the Industrial Disputes Act.

In Para : 3(e) of the writ petition it is alleged that the respondent No.1 could not have held the petitioner as a branch Manager. The petitioner was not having any power to grant leave to any employee nor he had any power to appoint, dismiss or take any action against any employee of Surat Branch. He had no independent decision making power. These averments are sworn on Affidavit and since no Counter Affidavit has

been filed prima facie these averments have to be accepted for the purposes of this writ petition. There was thus disputed question of fact whether the petitioner was working on the relevant date as Branch Manager or as Incharge Branch Manager or by nature of his duty attached to his office he was functioning in supervisory capacity and was functioning on the post of Managerial nature.

6. Rejoinder was also filed by the petitioner before the Conciliation Officer in which it was mentioned that he had no power and control over the employees of Surat Branch and that he was working merely as Senior Officer under the control of higher Authority of the Bank. The failure report Annexure : E also shows that the management's contention was that the petitioner is not a workman under the law and that the contention of the petitioner was that he was workman under the provisions of the Industrial Disputes Act. It was because of this dispute that the conciliation proceeding failed and failure report was submitted.

7. It was therefore clear from the material on record that there was disputed question whether the petitioner is a workman or was Branch Manager on the relevant date within the meaning of Section 2(s)(iv) of the Industrial Disputes Act and this dispute could not be adjudicated upon by the appropriate Government through Annexure : F. As such the impugned order contained in Annexure : F cannot be sustained. It has therefore to be quashed.

8. The writ petition, therefore, succeeds and is allowed. The order dated 21.1.1999 contained in Annexure : F is hereby quashed. The respondent No.1 is directed to refer the dispute to the Industrial Court at Surat within two weeks of receipt of copy of this order. No order as to costs.

sd/-

Date : July 21, 1999 ( D. C. Srivastava, J. )

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